

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

KIMBERLY ANNE KNIGHT,
Petitioner.

No. 2 CA-CR 2020-0062-PR
Filed June 19, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Petition for Review from the Superior Court in Yuma County
No. S1400CR201200058
The Honorable Brandon S. Kinsey, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Mark Brnovich, Arizona Attorney General
By Mary Harriss, Assistant Attorney General, Phoenix
Counsel for Respondent

Gail Gianasi Natale, Phoenix
Counsel for Petitioner

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MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 Kimberly Knight seeks review of the trial court’s ruling denying her petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.¹ We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Knight has not shown such abuse here.

¶2 After a jury trial, Knight was convicted of child abuse and aggravated assault. Her convictions stemmed from a subdural hematoma suffered by her six-month-old son that doctors opined resulted from nonaccidental trauma. The trial court sentenced her to concurrent prison terms of seventeen years for each count. We affirmed her convictions and sentences on appeal. *State v. Knight*, No. 1 CA-CR 13-0297 (Ariz. App. Apr. 29, 2014) (mem. decision).

¶3 Knight sought post-conviction relief, arguing her trial counsel had been ineffective in failing to present expert testimony contradicting the state’s expert witnesses, prepare adequately for cross-examination of the state’s experts, object to admission of an MRI “performed several days after the [victim’s] injury,” object to the introduction of audio recordings on hearsay and Confrontation Clause grounds, and object to some expert testimony as noncompliant with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Knight also complained that counsel had opened the door to “otherwise irrelevant” impeachment evidence while examining her, that counsel’s “cumulative errors were constitutionally ineffective,” and that her claims of ineffective assistance established that she was entitled

¹ Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a court determines that “applying the rule or amendment would be infeasible or work an injustice.” *Id.* Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.

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to relief under Rule 32.1(h) because “no reasonable fact finder would find her guilty beyond a reasonable doubt.”

¶4 After an evidentiary hearing, the trial court denied relief, noting that it could not “find that, had [Knight’s] trial counsel done any of the things she argues he should have done, the outcome of the trial would have been different.” This petition for review followed.

¶5 To prevail on her claim for ineffective assistance of counsel, Knight was required to “show that counsel’s performance fell below reasonable standards and that the deficient performance prejudiced h[er].” *Roseberry*, 237 Ariz. 507, ¶ 10 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). She must establish both elements, or her claim fails. *Id.* To establish prejudice, Knight was required to show there is a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *State v. Bennett*, 213 Ariz. 562, ¶ 25 (2006) (quoting *Strickland*, 466 U.S. at 694); *see also Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (defendant not required to establish attorney’s errors “more likely than not” altered result).

¶6 On review, Knight summarizes the purported deficiencies in counsel’s conduct. Her brief discussion is largely inadequate for this court to review her claims—for example, she cites no authority suggesting that the various objections counsel purportedly should have raised would have been sustained. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (failure to cite authority and develop argument waives claim on review). But, even had Knight fully presented on review her arguments about counsel’s conduct, the trial court did not decide whether counsel had fallen below prevailing professional standards. It instead grounded its decision in her failure to show prejudice. Knight does not address in her petition for review the court’s conclusion that, even had counsel acted differently, it would not have changed the outcome of her trial. *See id.* Irrespective of counsel’s conduct, her claim fails absent a showing of prejudice. *See Roseberry*, 237 Ariz. 507, ¶ 10. And, although she asserts in passing that she has shown she is entitled to relief under Rule 32.1(h), she also does not develop that argument in any meaningful way. *See Stefanovich*, 232 Ariz. 154, ¶ 16.

¶7 We grant review but deny relief.